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No. 83-310

In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM RUZICKA
Petitioner,

v.

GENERAL MOTORS CORPORATION
and
LOCAL 166 OF THE INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, (UAW)

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR GENERAL MOTORS CORPORATION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the trial court's finding of fact that the Local Union relied upon a past practice of granting extensions in failing to timely process petitioner's grievance was properly affirmed on appeal as not clearly erroneous?

PARTIES TO THE PROCEEDING

Petitioner: William Ruzicka

Respondents: General Motors Corporation*
and
Local 166 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW)

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* Pursuant to Rule 28.1 of the Rules of the Court, the following is a listing naming all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of Respondent General Motors Corporation: Motor Enterprises, Inc. (partly owned by the U.S. Small Business Administration); GMFanuc Robotics Corp.; Colmotores, Bogota, Columbia; General Motors Iran Limited, Tehran, Iran; Isuzu Motors Limited, Tokyo, Japan; GM Allison Japan Limited, Tokyo, Japan; General Motors Kenya Limited, Nairobi, Kenya; Saehan Motor Company, Ltd., Seoul, Korea; General Motors Pilipinas, Inc., Manila, Philippines; Saudi American Machinery Maintenance Company, Ltd., Jeddah, Saudi Arabia; and Industria Delova Automobile, Kikinda, Yugoslavia.

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OPINIONS BELOW

Ruzicka v. General Motors Corp., 336 F. Supp. 824 (E.D. Mich. 1972); 85 LRRM 2419 (E.D. Mich. 1973); 86 LRRM 2030 (E.D. Mich. 1973); rev'd 523 F.2d 306 (6th Cir. 1975); reh. den., 528 F. 2d 912 (6th Cir. 1975); 96 LRRM 2822 (E.D. Mich. 1977); vacated, 649 F.2d 1207 (6th Cir. 1981); 519 F. Supp. 893 (E.D. Mich. 1981); aff'd, 707 F.2d 259 (6th Cir. 1983).

COUNTERSTATEMENT OF THE CASE

William Ruzicka filed his action on June 3, 1971 alleging that he had been unfairly represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local Union 166 during his attempt to gain reinstatement with General Motors Corporation through the collective agreement's grievance procedure.

At trial on the issue of unfair representation, after completion of plaintiff's case and, at the trial court's request, after testimony of Charles Panter, all defendants were granted involuntary dismissal. Panter is the former Union committeeman whom the plaintiff claimed had represented him in bad faith, and whom the trial court found had unintentionally failed to timely process plaintiff's discharge grievance because of which plaintiff's discharge became final without further appeal.

On appeal, the court of appeals, reading the trial court's decision as incorporating bad faith as an essential element of unfair representation, reversed and remanded: "We do not find the duty of fair representation so limited. In *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) the Supreme Court held that Union actions which are 'arbitrary, discriminatory, *or* in bad faith' (emphasis added) could establish a breach of the duty of fair representation."[1]

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[1] *Ruzicka v. General Motors Corporation*, 523 F.2d 306, 309 (6th Cir. 1975).

However, the court of appeals made no finding that either of the Unions had unfairly represented petitioner.[2] (Involuntary dismissal had been granted under Rule 41(b) reserving to respondents the right to offer evidence in the event that dismissal at completion of petitioner's case was not proper.) Rather, the court granted summary judgment in favor of the Unions based upon their cross-claim against GM seeking arbitration. The trial court was directed to order arbitration with the GM-UAW Umpire to be charged "[i]f the National Agreement is interpreted to mean that GM is relieved of its contractual duties because of the Union's failure to follow grievance procedures, the District Court should proceed to award appropriate relief against Local 166 on the unfair representation claim."[3] This order of the court of appeals was anomalous in view of the circumstance that the Union's policy grievance filed on June 14, 1980 seeking reinstatement of Ruzicka's grievance despite the procedural problem had been withdrawn by Local 166 on April 24, 1981. (See Pet. App. 50) Ruzicka has never alleged that this withdrawal constituted unfair representation or claimed that it was otherwise wrongful. Therefore, the court of appeals granted the Union's cross-claim for arbitration even though the collective agreement's grievance-arbitration procedure had not been exhausted by the union and Ruzicka never claimed that this failure amounted to unfair representation. (See Pet. App. 89)

After remand, the district judge ordered the *contractual merits* of petitioner's discharge submitted to the Umpire. However, the trial court rejected the mandate of the court of appeals that

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[2] Dismissal of the International Union was affirmed because there had been no showing of involvement of International Union officers in the processing of the plaintiff's grievance.

[3] *Ruzicka v. General Motors Corporation*, *supra*, at 315.

the Umpire was first to be presented with the Unions' claim that petitioner's grievance was not procedurally dead because of untimely processing and the further direction of the appellate court that if General Motors prevailed on this issue, there would be no ground for imposing liability on General Motors. The trial court based its refusal upon *Hines v. Anchor Motor Freight, Inc.* 424 U.S. 554 (1976) wherein the Supreme Court held that finality provisions of grievance-arbitration provisions in collective agreements may be nullified if "... the process has fundamentally malfunctioned by reason of the bad faith performance of the union..." 424 U.S. at 569.

Thereafter, the matter was presented to the Umpire by the arbitration staff representatives of General Motors and the International Union. In his written decision, the Umpire said that based upon the record as presented to him (seven years after the incident), it was his judgment that the appropriate penalty was a thirty day disciplinary layoff rather than discharge. The Umpire noted he was rendering his opinion without being able to consider relevant factors not included in the record.

It was not until receipt of the Umpire's opinion that the trial court reconvened the trial and heard the Local Union's rebuttal of the petitioner's unfair representation case. After the Union rested, the trial court issued its Opinion of October 5, 1977 finding that the Local Union's Executive Shop Chairman had failed to timely appeal petitioner's grievance and that as a matter of law such misfeasance amounted to unfair representation. The court rendered judgment against both the Local Union and General Motors. The court's judgment against General Motors on a contractual cause of action was based solely upon the Umpire's opinion. No other evidence calculated to show that petitioner's discharge was in violation of the collective agreement was offered. General Motors and the Local Union appealed. (The trial court granted General

Motors motion for stay, the motion based upon a brief and accompanying affidavit showing, *inter alia,* that petitioner had since September, 1971 comparable employment at another automobile manufacturer and that reinstatement pending appeal could result in irreparable harm to General Motors, its employes and to petitioner himself. Ruzicka apparently continues in that employment to this day.)

This case returned to the court of appeals on appeal of all parties. General Motors argued, *inter alia,* that the facts found by the trial court did not allow a finding of unfair representation and that the ruling if unreversed would render null and void bargained for finality provisions of the grievance-arbitration procedure in contravention of the national labor policy.

The Court of Appeals, in vacating the trial court's decision and remanding the case, pointed out:

> "The key to *Ruzicka I,* then, was our holding that 'unexplained union inaction' which substantially prejudices a member's grievance could amount to the type of arbitrary conduct which evidences unfair representation. . . .
>
> If the district court concludes that the bargaining representative's failure to timely file the grievance statement was due to reliance on the prevailing practice of freely granted extensions, that will be sufficient to relieve the union from liability.
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> • • •
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> In *Dill v. Greyhound Corp.* 435 F. 2d 231, 238 (6th Cir. 1970), *cert. denied,* 402 U.S. 952, 91 S.Ct. 1622, 29 L.Ed.2d 122 (1971) we held that bad faith was required to support a claim of unfair representation where the union had made a decision that the individual's grievance was without merit. *See also Whitten v. Anchor Motor*

Freight, Inc., 521 F.2d 1335, 1341 (6th Cir. 1975) *cert. denied*, 425 U.S. 981, 96 S.Ct. 2188, 48 L.Ed.2d 807 (1976); *Balowski v. International U., United A. A. & A. Imp. Wkrs.*, 372 F. 2d 829 (6th Cir. 1967). Admittedly, in those cases the merits of the employee's grievance had, in fact, been evaluated and decided adversely to the employee by the union, which chose not to pursue the grievances. In the present case the union *inaction* served to terminate the grievance. Yet we see no reason to apply a stricter standard to a union's untimely filing of a statement based on past practice than is applied to a union's decision not to pursue a grievance that it believes to be without merit. In both cases, the union can articulate a sufficient legal rationale to justify the manner in which a grievance has been handled. Whatever the rationale, the standard against which it is judged should be uniform. A contrary conclusion would inject the court into the process of second-guessing a union's ability to rely on prevailing practices."[4]

The district court, on remand, dismissed the action against the Union and General Motors.

On appeal the Sixth Circuit affirmed, ruling upon review of the record that the trial court's finding of reliance by the union representative was not clearly erroneous.

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[4] *Ruzicka v. General Motors Corporation*, 649 F.2d 1207, 1211-12 (6th Cir. 1981)

ARGUMENT

The Petition fails to raise any issue worthy of the Court's attention. The simple and direct holding of the Sixth Circuit was that the record on appeal foreclosed it from deciding that the trial court was clearly erroneous in finding that Committeeman Panter had relied upon past practice in failing to timely process Ruzicka's grievance. With this crucial *fact* established, both the trial court and the court of appeals were mandated by the rule of this Court in *Vaca v. Sipes,* to hold as a matter of law that the Union had not violated its duty of fair representation and to dismiss against each defendant. As the Court of Appeals pointed out in its June, 1981 Opinion remanding, the Sixth Circuit's traditional application of *Vaca* in cases in which the union had made a decision concerning the merits of a grievance required a finding of bad faith of the union before it could be found guilty of unfair representation, citing *Dill v. Greyhound Corp, supra, Whitten v. Anchor Motor Freight, Inc., supra,* and *Balowski v. International U., United A. A. & A. Imp. Wkrs., supra.*[5] Otherwise, the courts would unjustifiedly be thrust into a role of second-guessing collective bargaining representatives. In correctly holding that the identical standard was to be applied to Panter's handling of Ruzicka's grievance in this case, the trial court and court of appeals merely echoed a unanimity of the courts of appeal and there is no basis for reviewing such decision.

Because there was no appeal of the dismissal of the Union's cross-claim, petitioner may not raise before this Court the status of the arbitration award. Moreover, it is clear there was never federal court jurisdiction of such claim. As General Motors pleaded in its original motion to dismiss the cross-claim, the court's jurisdiction was defeated by the withdrawal

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[5] *Ibid.*

of the policy grievance which had sought to reinstate Ruzicka's discharge grievance. This Court said in *Bowen v. U.S. Postal Service*, _____ *U.S.* _____, 74 L. Ed.2d 402, 415 (1983), that if an employer were not in such instance able to rely upon a union's decision not to pursue a grievance it would defeat the very purpose of the grievance-arbitration process and be contrary to the national labor policy.[6]

Additionally, Ruzicka never alleged that withdrawal of the policy grievance was wrongful. In this connection, the trial court specifically found that Ruzicka "...presented no evidence that the Local's response to GM's position on timeliness violated its duty." (Pet. App. 122-123)

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[6] In footnote 4 on Page 13 of the Petition, Ruzicka misleads the Court by quoting the district judge to the effect that the arbitrator should have been compelled to determine the timeliness of the grievance. Ruzicka neglects to include the remainder of that paragraph from the Opinion which clearly indicates that the court is only stating the union's original claim without agreeing with it. See 519 F. Supp. 897, fn 4.

CONCLUSION

For the foregoing reasons, the Court should *deny* the Petition.

Respectfully submitted,

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